

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ELIZABETH DE COSTER, NEMANJA
KRSTIC, JOHN MARIANE, OSAHON
OJEAGA, and EMMA ZABALLOS, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

AMAZON.COM, INC., a Delaware corporation,

Defendant.

Case No. 2:21-cv-693

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

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PRELIMINARY STATEMENT

1. At the heart of Amazon's storefront is its Amazon Marketplace, which operates as a platform connecting third-party sellers and consumers. In fact, when consumers search for goods and services on Amazon, their query results usually bring up goods for sale by sellers other than Amazon, and third-party sales make up the majority of all Amazon.com sales. Thus, Amazon is wholly distinct from traditional retailers, which buy goods at wholesale prices and then mark them up at retail to sell directly to consumers. Instead, the Amazon Marketplace is functionally a marketplace platform like eBay, serving as an intermediary between disparate sellers and disparate buyers.

10 2. Nicholas Denissen, Amazon’s Vice President of Marketplace Business, describes
11 the Amazon Marketplace as “an online marketplace where millions of third-party sellers” sell their
12 goods.¹ This arrangement gives sellers access to millions of buyers, and buyers access to millions
13 of sellers.² He likens it to “an online mall where independent merchants display their products to
14 people perusing the website.”³ And Amazon is indeed the largest and most dominant “online
15 mall” in the country. Amazon’s share of the market for ecommerce marketplaces is over 70%,
16 with few meaningful competitors. Amazon has held this position of power for many years.

17 3. Amazon charges those selling on its site hefty fees for its middleman services.
18 Amazon Marketplace deducts a variety of fees from every transaction executed on its marketplace,
19 including “Referral” fees, “Closing” fees, and various administrative fees. Altogether, these fees
20 add up to roughly 27% of every marketplace transaction.⁴ In turn, the need for sellers to pay
21 Amazon this hefty cut inflates the price of every good sold on the Amazon Marketplace.

²⁴ 1 Declaration of Nicholas Denissen, Amazon’s Vice President of Marketplace Business (Jun.
30, 2017), *Oberdorf v. Amazon.com*, Case No. 16-cv-1127MWB (M.D. Pa.), Dkt. No. 31
²⁵ (“Denissen Decl.”), ¶ 5.

² *Id* at ¶ 8.

³ *Id.* at ¶ 5.

⁴ Karen Weise, *Prime Power: How Amazon Squeezes the Businesses Behind Its Store*, NYT (Dec. 19, 2019), <https://www.nytimes.com/2019/12/19/technology/amazon-sellers.html>.

1 4. Among ecommerce platforms, Amazon has the highest commission and charges the
 2 most for its services. Amazon is able to maintain these inflated commissions because it blocks
 3 competition. One would expect that competitors would challenge Amazon's inflated fee structure
 4 by offering lower commissions, which would allow sellers to sell more goods at lower prices to
 5 consumers. But Amazon mandates that all sellers who use its must-have platform agree they will
 6 not offer *lower* prices to consumers through any other channel—even if that other channel
 7 involves a lower commission, or no commission at all. Amazon imposes this restraint through a
 8 provision that acts as a “platform most favored nations” clause (the “PMFN”).

9 5. While Amazon has changed the specific language and form of the PMFN over
 10 time, in part, as discussed below, to try to evade regulatory scrutiny, the purpose and the effect has
 11 stayed the same—alternative low-commission platforms cannot compete with Amazon on price
 12 because the PMFN prevents them from recruiting sellers and consumers (and taking sales away
 13 from Amazon) with lower commissions and other perks that would result in lower consumer
 14 prices. Instead, because of the PMFN, anyone wanting to sell on Amazon must not only pay
 15 Amazon's inflated commissions and charge higher prices to consumers as a result, but also agree
 16 to charge the same inflated price on *all* platforms in the United States. And they must do this even
 17 when they list goods for sale on their own direct-to-consumer storefronts at the implicit
 18 commission price of 0%.

19 6. Because Amazon Marketplace is a must-have for sellers, with over 70% of the
 20 market for ecommerce marketplaces, sellers have little choice but to comply with Amazon's
 21 anticompetitive scheme. Almost half of Amazon's third-party sellers generate 81% to 100% of
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1 their revenues from sales on the Amazon Marketplace.⁵ As one third-party seller, Molson Hart,
 2 succinctly puts it: “[W]e have nowhere else to go and Amazon knows it.”⁶

3 7. Many of the 2 million retailers who sell on the Amazon Marketplace platform do so
 4 reluctantly, but nevertheless realize the Amazon Marketplace is a must-have for their businesses.
 5 “Virtually every manufacturer and retailer of consumer goods in America faces [the] same
 6 predicament,” explains Stacy Mitchell, co-director of Institute for Local Self-Reliance, in recent
 7 testimony to the House of Representatives’ Judiciary Committee.⁷ In order to reach the highest
 8 number of potential customers in the U.S., they *must* list through Amazon. And Amazon’s PMFN
 9 cements its stranglehold over sellers, because it prevents competing platforms from gaining scale
 10 by offering lower commissions to sellers and lower prices to consumers.

11 8. To enforce this anticompetitive provision, Amazon deploys an army of algorithms
 12 and robots to crawl the internet and detect violations. Punishment is swift, and can involve
 13 removal from Amazon.com altogether, which can be devastating for the many small- and medium-
 14 sized businesses trying to survive. Jarvin Karnani, who has been selling on Amazon Marketplace
 15 for two years, told the FTC, “[I]f Amazon suspends you, it’s like a death knell . . . [W]hen
 16 Amazon shuts you off, they sit on your money for 90 days and there’s nothing you can do.”⁸ To
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20 5 J. Clement, *Percentage of e-commerce revenue from Amazon sales according to Amazon*
 21 *marketplace sellers in 2018*, Statista (May 4, 2019), <https://www.statista.com/statistics/259782/third-party-seller-share-of-amazon-platform/>.

22 6 Molson Hart, *How Amazon’s Business Practices Harm American Consumers: Why Amazon*
 23 *Needs a Competitor and Why Walmart Ain’t It*, Medium (July 18, 2019),
<https://medium.com/swlh/amazon-needs-a-competitor-and-walmart-aint-it-5997977b77b2>.

24 7 Testimony of Stacy F. Mitchell, Co-Director Institute for Local Self-Reliance, (Jul. 16,
 25 2019), <https://docs.house.gov/meetings/JU/JU05/20190716/109793/HHRG-116-JU05-Wstate-MitchellS-20190716.pdf>.

26 8 Spencer Soper & Ben Brody. *Amazon Probed by U.S. Antitrust Officials Over Marketplace*,
 27 Bloomberg (Sept. 11, 2019), <https://www.bloomberg.com/news/articles/2019-09-11/amazon-antitrust-probe-ftc-investigators-interview-merchants>.

1 ensure compliance with Amazon's price policies, some sellers have come to rely on an external
 2 service to replicate their prices across multiple marketplaces.⁹

3 9. Amazon has faced challenges to its PMFN from competition regulatory authorities
 4 all over the world. In 2013, Amazon withdrew this very practice in Europe under pressure from
 5 British and German regulators.¹⁰

6 10. In the United States, Amazon came under fire for its PMFN in December 2018,
 7 when Richard Blumenthal, the senior United States Senator from Connecticut, called for the
 8 Federal Trade Commission ("FTC") to investigate the practice.¹¹ In response, Amazon also
 9 pretended to withdraw its PMFN in the U.S. in March of 2019.¹² At the time, Dani Nadel,
 10 president of Feedvisor, a company that advises Amazon sellers, expected it to be a watershed
 11 moment that would lead "the greater e-commerce landscape" to be "much more dynamic."¹³
 12 Likewise, David Simnick, co-founder and CEO of Soapbox, a Washington, D.C.-based soap and
 13 shampoo maker that sells on Amazon, reported that when he learned that Amazon was revoking its
 14 PMFN, "I almost did a back flip in the hotel gym."¹⁴

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17 ⁹ E.g., Rupert Heather, *The Little-Known Amazon Pricing Rule that Would Burn Your*
 18 *Business*, Xsellco, <https://www.xsellco.com/resources/amazon-pricing-rule-burn-business/>.

19 ¹⁰ European Commission, *Germany and United Kingdom: Antitrust Cases against Amazon*
 formally closed, https://ec.europa.eu/competition/ecn/brief/05_2013/amaz_deuk.pdf.

20 ¹¹ Letter from Senator Richard Blumenthal to Josephs Simons, Federal Trade Commission
 21 Chair (Dec. 19, 2018), <https://www.blumenthal.senate.gov/imo/media/doc/12.19.18%20-%20FTC%20-%20Price%20Parity.pdf>.

22 ¹² Catherine Shu, *Amazon Reportedly Nixes Its Price Parity Requirement for Third-Party*
 23 *Sellers in the U.S.*, Tech Crunch (Mar. 11, 2019), <https://techcrunch.com/2019/03/11/amazon-reportedly-nixes-its-price-parity-requirement-for-third-party-sellers-in-the-u-s/>.

24 ¹³ Daphne Howland, *Amazon Caves on Seller Pricing*, Retail Dive (Mar. 13, 2019),
 25 <https://www.retaildive.com/news/amazon-caves-on-seller-pricing/550388/>.

26 ¹⁴ Guadalupe Gonzalez, *You're No Longer Required to Sell Products for Less on Amazon. The Problem? If You Don't, You've Got Another Penalty Coming*, Inc. (Mar. 13, 2019),
 27 <https://www.inc.com/guadalupe-gonzalez/amazon-removes-price-parity-not-fair-price-rule-third-party-sellers-antitrust-violations.html>.

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1 11. But in fact, Amazon quietly readopted the PMFN under a new name—a “fair
 2 pricing” provision, which has the same effect as its former PMFN, which it called a “price parity”
 3 provision.¹⁵ Whereas the “price parity” PMFN prohibited sellers from offering cheaper deals
 4 through competing retail ecommerce channels, the “fair pricing” rule likewise imposes severe
 5 penalties on merchants who sell their products at cheaper prices on competing platforms, including
 6 by terminating selling privileges, removing the product from the coveted Buy Box, or suspending
 7 shipping options.¹⁶

8 12. Amazon, therefore, continues to enforce its PMFN and to punish retailers who
 9 price lower on other sites.¹⁷ As a result, “many sellers are still operating by the price parity rule in
 10 fear that their account will be impacted as a result.”¹⁸ In short, nothing changed but the name
 11 Amazon gave to its anticompetitive restraint.

12 13. Amazon’s PMFN has market-wide harmful effects on competition and protects its
 13 dominance. After an extensive investigation, the Chair of the House Judiciary Antitrust,
 14 Commercial and Administrative Law Subcommittee concluded that Amazon captures “70% of all
 15 online marketplace sales.”¹⁹ Amazon has obtained monopoly power in the U.S. ecommerce
 16 platform market, as demonstrated by its power to set the prevailing prices of the vast majority of
 17 consumer goods offered for sale on the internet.

18 14. Amazon has willfully acquired its monopoly power in the market for U.S.
 19 ecommerce platforms through anticompetitive conduct, including enforcement of its PMFN,
 20 thereby causing supracompetitive prices for all products sold in the U.S. ecommerce platform
 21 market. Amazon’s imposition and enforcement of PMFN clauses in its seller contracts amounts to

23 ¹⁵ *Id.*

24 ¹⁶ *Id.*

25 ¹⁷ *Supra* Hart; Gonzalez.

26 ¹⁸ Catie Grasso, *Amazon Pricing Strategy: How Much Should You Sell a Product For?*,
 Feedadvisor (Jan. 31, 2020), <https://feedvisor.com/resources/marketplace-fees-policies/amazon-pricing-strategy/>.

27 ¹⁹ Press Release from U.S. House Antitrust Subcommittee (July 29, 2020), <https://judiciary.house.gov/news/documentsingle.aspx?DocumentID=3199>.

1 restraints of trade that violate Section 1 of the Sherman Act, and its conduct is also an abuse or
 2 attempted abuse of monopoly power in violation of Section 2 of the Sherman Act.

3 15. Plaintiffs on their own behalf and that of similarly situated consumers, seek
 4 monetary recovery and injunctive relief for harm caused by Amazon's violations of federal
 5 antitrust law—harm that persists and will not abate unless Amazon is stopped.

6 I. JURISDICTION

7 16. This Court has federal question jurisdiction pursuant to the federal antitrust laws
 8 invoked herein, including the Sherman Act and Clayton Antitrust Act, *e.g.*, 28 U.S.C. § 1331, 28
 9 U.S.C. § 1337(a), and 15 U.S.C. § 15(a).

10 17. This Court also has subject matter jurisdiction pursuant to the Class Action
 11 Fairness Act of 2005, 28 U.S.C. § 1332(d), because at least one Class member is of diverse
 12 citizenship from Amazon, there are more than 100 Class members nationwide, and the aggregate
 13 amount in controversy exceeds \$5,000,000.

14 18. Plaintiffs are residents of Illinois, Maryland, Texas, and Washington, D.C., who
 15 purchased consumer goods online. Plaintiffs were harmed and injured financially because of
 16 Amazon's conduct, as described further herein.

17 19. This Court has personal jurisdiction over Amazon because Amazon has its
 18 principal headquarters in Washington, does business in Washington, directly or through agents,
 19 and has registered with the Washington Secretary of State such that it has sufficient minimum
 20 contacts with Washington.

21 II. VENUE

22 20. Venue is proper under 28 U.S.C. § 1331(b)(1) and (2) because Amazon's principal
 23 place of business is in this judicial district and a substantial part of the events or omissions giving
 24 rise to the claims occurred in this judicial district.

25 21. Venue is proper in the United States District Court for the Western District of
 26 Washington because Defendant Amazon consented to being sued in this District.
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III. PARTIES

A. Plaintiffs

22. Plaintiff Elizabeth De Coster is a resident of Maryland. Ms. De Coster has purchased, from Amazon, products offered by third party sellers on the Amazon platform, including one or more items purchased on or after May 5, 2021.

23. Plaintiff Nemanja Krstic is a resident of Illinois. Mr. Krstic has purchased, from Amazon, products offered by third party sellers on the Amazon platform, including one or more items purchased on or after May 5, 2021.

9 24. Plaintiff John Mariane is a resident of Illinois. Mr. Mariane has purchased, from
10 Amazon, products offered by third party sellers on the Amazon platform, including one or more
11 items purchased on or after May 5, 2021.

12 25. Plaintiff Osahon Ojeaga is a resident of Texas. Ms. Ojeaga has purchased, from
13 Amazon, products offered by third party sellers on the Amazon platform, including one or more
14 items purchased on or after May 5, 2021.

15 26. Plaintiff Emma Zaballos is a resident of Washington, D.C. Ms. Zaballos has
16 purchased, from Amazon, products offered by third party sellers on the Amazon platform,
17 including one or more items purchased on or after May 5, 2021.

B. Defendant

19 27. Amazon is an online retail giant with its principal headquarters in Seattle,
20 Washington. Amazon sells directly to its retail customers on the Amazon.com platform. Amazon
21 also maintains Amazon Marketplace, a platform for its two million third-party sellers, whom it
22 also permits to sell on the Amazon.com platform. Amazon contractually obligates its third-party
23 sellers to adhere to the pricing policies challenged in this lawsuit.

24 28. Amazon's third-party sellers' registration is handled on the Amazon.com platform,
25 where Amazon also has maintained the agreements with its third-party sellers relevant to this
26 lawsuit. Substantially all of the misconduct alleged in this complaint occurred in or emanated
27 from Amazon's headquarters and principal place of business in Seattle, Washington.

IV. BACKGROUND

2 29. Amazon Marketplace is a marketplace platform that connects sellers and
3 consumers, allowing sellers to find buyers and buyers to find sellers. Because of its utter
4 dominance, the Amazon Marketplace is not just “a” marketplace platform—it is “*the*” marketplace
5 platform. For example, a third-party seller named Molson Hart, who sells toys on Amazon
6 reports: “Were we to be suspended from selling on Amazon.com, it would probably take 3–6
7 months before we’d be bankrupt. We are not alone. This is typical for small to medium sized
8 businesses which sell online today. In fact, most companies like our own, would probably go bust
9 even faster.”²⁰

10 30. Sellers need access to the Amazon Marketplace so they can reach Amazon's 105
11 million Prime members in the United States, a subscription service that locks buyers into the
12 Amazon.com platform.²¹ To put that into perspective, more American households have Amazon
13 Prime accounts than attend church regularly or have a landline phone.²²

31. According to a survey, an estimated 20% of Amazon Prime members shopped on Amazon a few times per week, and 7% did so almost daily.²³ U.S. Prime members spend an average of \$1,400 per year on the Amazon.com platform.²⁴ Another survey found that 96% of all

²⁰ Molson Hart, *How Amazon's Business Practices Harm American Consumers: Why Amazon Needs a Competitor and Why Walmart Ain't It*, Medium (July 18, 2019), <https://medium.com/swlh/amazon-needs-a-competitor-and-walmart-aint-it-5997977b77b2>.

²² *Number of Amazon Prime members in the United States as of June 2019*, Statista (Dec. 1, 2020), <https://www.statista.com/statistics/546894/number-of-amazon-prime-paying-members/>.

²³ ²² Margot Whitney, *Complete Beginner's Guide to Advertising on Amazon*, WordStream (Aug. 27, 2019), <https://www.wordstream.com/blog/ws/2017/09/11/amazon-advertising>.

²³ Supra Number of Amazon Prime members in the United States as of June 2019.

²⁴ Average annual amount spent on Amazon according to U.S. Amazon Prime and non-Prime members as of March 2019, Statista (Nov. 30, 2020), <https://www.statista.com/statistics/304938/amazon-prime-and-non-prime-members-average-sales-spend/>.

1 Prime members are more likely to buy products from the Amazon.com platform than any other
 2 ecommerce site.²⁵

3 32. Because of the hefty fees it charges its third-party sellers, the Amazon Marketplace
 4 is hugely profitable for Amazon. Amazon's profit margin on its seller service fees is significantly
 5 higher than the margin on its own first-party retail sales.²⁶ Whereas Amazon operates its own
 6 retail operations with razor-thin margins, it takes a significant percentage of each sale by its third-
 7 party sellers, plus additional charges to store and ship the inventory of the merchants that use the
 8 "Fulfillment by Amazon" ("FBA") service.²⁷ Because of this, financial analysts at Evercore ISI
 9 valued Amazon's third-party services at more than \$250 billion, while giving its in-house retail
 10 operations a value of just \$120 billion.²⁸

11 33. The seller's relationship with Amazon typically begins with a \$40 fee.²⁹ Then
 12 Amazon adds a commission ("referral fees") for each item sold on its platform, typically around
 13 15%.³⁰ Amazon also charges a per-item fee or a monthly subscription and it charges the seller the
 14 lesser of \$5 or 20% of the price as a fee for any refunds when a shopper returns the product.³¹

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17 ²⁵ Kiri Masters, *89% Of Consumers Are More Likely To Buy Products From Amazon Than*
 18 *Other E-Commerce Sites: Study*, Forbes (Mar. 20, 2019),
<https://www.forbes.com/sites/kirimasters/2019/03/20/study-89-of-consumers-are-more-likely-to-buy-products-from-amazon-than-other-e-commerce-sites/#452623b04af1>.

20 ²⁶ Adam Levy, *Amazon's Third-Party Marketplace Is Worth Twice as Much as Its Own*
Retail Operations, Motley Fool (Apr. 11, 2019),
<https://www.fool.com/investing/2019/03/07/amazons-third-party-marketplace-is-worth-twice-as.aspx>.

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27 ²⁷ *Id.*

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28 ²⁸ *Id.*

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29 ²⁹ Amazon Services Registration Page, https://services.Amazon.com/sem-landing.html?ref=pd_sl_2thvswc79_b&hvdev=c&ld=SEUSSOABING-B20000SC-D&hvadid=78615157546872&hvqmt=p&tag=mh0b-20&hbmt=bb.

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30 ³⁰ David Hamrick, *Amazon FBA Fees, How They Work, and How to Profit as a Seller*, Jungle Scout (Mar. 24, 2021), <https://www.junglescout.com/blog/amazon-fba-fees/>.

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31 ³¹ *Id.*

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34. Optionally, and for an additional fee, FBA will store, pick up, pack, ship orders, and manage customer service and returns. Sellers who enroll in FBA qualify for Amazon Prime and free shipping for eligible orders; otherwise most sellers must join a waitlist to join Seller Fulfilled Prime, which commits sellers to fulfill orders with two-day delivery at no additional charge for Prime customers.³² Accepting FBA services also greatly increases the likelihood that Amazon's algorithm will select the seller's product for the coveted Amazon Buy Box.³³ Meanwhile, sellers' enrollment in FBA is a win for Amazon, who never takes title to the third-party seller's inventory,³⁴ yet enjoys a steady revenue from its sellers, who do all the merchandising and take on the inventory risk.³⁵

35. Amazon's middleman fees are a huge source of revenue and profit for Amazon as a
10 company. Between 2015 and 2018, Amazon's revenue from third-party seller fees grew from \$16
11 billion to \$43 billion, outpacing both the overall growth of Amazon's retail sales, and the growth
12 of sales made by third-party sellers on the Amazon.com platform.³⁶ And this is on top of the
13 numerous other fees Amazon collects via Amazon Marketplace.³⁷
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15 36. “Amazon collects 27 cents of each dollar customers spend buying things its
16 merchants sell, a 42 percent jump from five years ago, according to Instinet, a financial research

³² Sell products with the Prime badge directly from your warehouse, Amazon Seller Central, <https://services.Amazon.com/services/seller-fulfilled-prime.html>.

³³ Leanna Zeibak, *How to Win the Amazon Buy Box in 2021*, Tinuiti (Mar. 25, 2020), <https://tinuiti.com/blog/amazon/win-amazon-buy-box/>.

³⁴ Declaration of Ella Irwin, Director of Marketplace Abuse at Amazon (Jul. 13, 2018), *Kangaroo Mfg., Inc. v. Amazon.com*, Case No. 17-cv-1806SPL (D. Ariz.), Dkt. No. 75 (“Irwin Decl.”), ¶ 5.

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35 *Supra* Howland.

25 || 36 *Supra* Mitchell.

³⁷ Pamela N. Danziger, *Amazon's Third-Party Marketplace Is Its Cash Cow, Not AWS*, Forbes (Feb. 5, 2021), <https://www.forbes.com/sites/pamdanziger/2021/02/05/amazons-third-party-marketplace-is-its-cash-cow-not-aws/?sh=486294bc21c0>.

1 firm. That does not include what companies pay to place ads on Amazon, a business that Wall
 2 Street considers as valuable as Nike.”³⁸

3 37. On-platform advertising is another cost that sets Amazon apart from other
 4 platforms. Amazon is the third largest provider of digital advertising.³⁹ Investors expect its \$10
 5 billion advertising sales⁴⁰ to jump \$28.4 billion over the next five years.⁴¹ (By comparison,
 6 Walmart’s ad offerings to its third-party sellers are at the nascent stage.⁴²)

7 38. According to John Denny, who ran ecommerce for the drink company Bai,
 8 companies used to believe that if they had a great product, it would show up in Amazon’s search
 9 results, and sales would follow. “Those days are over,” Mr. Denny said. “There are no lightning
 10 strikes on Amazon anymore.”⁴³

11 39. For many Amazon sellers, placing advertisements on the Amazon.com platform is
 12 necessary to getting or maintaining a high ranking on the platform. That means that Amazon’s
 13 third-party sellers must pay more money to sell the same products. For example, on a \$150
 14 product, Amazon charges Molson Hart’s company a \$17.58 advertising fee to appear in Amazon’s
 15 search results.⁴⁴

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³⁸ *Supra* Weise.

³⁹ Eugene Kim, *Amazon quietly removes promotions of its own products as calls for tech regulation escalate*, NBC (Apr. 3, 2019), https://www.nbcnews.com/tech/tech-news/amazon-quietly-removes-promotions-its-own-products-calls-tech-regulation-n990666?cid=public-rss_20190410.

⁴⁰ Nicole Perrin, *Amazon Advertising 2019. Growth and Performance Are Strong at the No. 3 US Digital Ad Seller*, Emarketer (Nov. 7, 2019), <https://www.emarketer.com/content/amazon-advertising-2019>.

⁴¹ Lara O’Reilly and Laura Stevens, *Amazon.com: Emerges as Advertising Giant*, Market Screener, (Nov. 27, 2018), <https://www.marketscreener.com/AMAZON-COM-12864605/news/Amazon-com-Emerges-as-Advertising-Giant-27665223/>.

⁴² Tara Johnson, *Selling on Walmart: Vendor vs. Third Party vs. Hybrid*, Tinuiti (JUN 26, 2020), <https://tinuiti.com/blog/walmart/selling-on-walmart-vendor-vs-third-party-vs-hybrid/>.

⁴³ *Supra* Weise.

⁴⁴ *Id.*

1 40. “It’s increasingly pay-to-play,” said Melissa Burdick, a 10-year Amazon veteran
 2 who now advises major consumer brands.⁴⁵ Quartile tested the importance of on-platform ads in
 3 2018 when it stopped running ads on Amazon for 750 popular products and found that sales
 4 shrank by 24%.⁴⁶ The effect only increased over time. After 10 weeks, sales of the products
 5 without ads had tumbled 55%.⁴⁷

6 41. Since 2014, Amazon began charging its third-party sellers advertising fees to
 7 ensure their products show up when customers search for their products on the Amazon.com
 8 platform. For consumers, that means that advertising influences search results more than
 9 relevance; for third-party sellers, it means higher selling costs. For example, Amazon charged its
 10 third-party seller, Molson Hart, \$763,000 for advertising and commissions in 2018:

11 In exchange for this \$763,000, they operate an online catalog and
 12 deliver search results. We sell about 200 products on Amazon.

13 Does it cost anywhere near \$763,000 to display our products there?
 14 Definitely not.[⁴⁸]

15 42. Walmart’s on-platform advertising service, which began in 2020, is neither as
 16 extensive as Amazon’s nor, because of the relatively small number of sellers and products, as
 17 necessary to make sellers’ products visible.⁴⁹ Amazon’s third-party sellers could therefore
 18 profitably lower their prices on Walmart’s platform (and therefore put competitive pressure on
 19 Amazon) if not restrained by Amazon’s PMFN. In fact, Walmart routinely fields requests from

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 23 45 *Supra* Weise.

24 46 *Id.*

25 47 *Id.*

26 48 *Supra* Hart.

27 49 Greg Swan, *The Ultimate Walmart Marketplace Guide (Pros, Cons, Secrets and More)*,
 28 Tinuiti (Jan 9, 2020), <https://tinuiti.com/blog/walmart/sell-on-walmart-marketplace/>.

third-party sellers to raise prices on its marketplace because they worry that a lower price on the Walmart platform will jeopardize their sales on the Amazon.com platform.⁵⁰

43. Amazon also charges sellers fees for some types of customer reviews.⁵¹ All of these added fees mean that sellers' prices go up on the Amazon.com platform, and by virtue of Amazon's pricing policies, other platforms as well. Some third-party sellers report giving Amazon 40% or more for each transaction, an increase from 20% just a few years ago.⁵²

V. RELEVANT MARKET

44. The relevant geographic market is the United States of America.

9 45. The relevant product market is the market for ecommerce platforms. That market
10 has two principle types of competitors: ecommerce marketplaces (also referred to as multilateral
11 platforms) and direct-to-consumer online storefronts (which are functionally single-seller
12 platforms). Examples of ecommerce marketplaces include Amazon, eBay, and Walmart.
13 Examples of direct-to-consumer online storefronts include Adorama.com and Pharmapacks.com.
14 Many sellers that utilize the Amazon Marketplace also operate their own direct-to-consumer
15 storefronts, like Adorama and Pharmapacks.

16 46. In the market for ecommerce platforms, competitors compete to offer the lowest,
17 best, and most innovative execution method for a sale. That is, they compete to offer the best
18 intermediation between disparate buyers and sellers. Through this lens, direct-to-consumer
19 storefronts are competing against the Amazon Marketplace by offering a system to connect the
20 seller with consumers on the seller's own website.

21 47. Ecommerce platforms are not reasonably interchangeable with traditional
22 wholesale/retail retailers. Ecommerce platforms provide opportunities for end-sellers to directly

⁵⁰ Spencer Soper, *Amazon Squeezes Sellers That Offer Better Prices on Walmart*, Bloomberg (Aug. 5, 2019) <https://www.bloomberg.com/news/articles/2019-08-05/amazon-is-squeezing-sellers-that-offer-better-prices-on-walmart>.

⁵¹ *Id.*; Amazon, *What is the Early Reviewer Program?*, <https://www.Amazon.com/gp/help/customer/display.html?nodeId=202094910>.

28 || 52 *Supra* Soper.

reach end-buyers without the need to sell their wares at wholesale prices. Instead, end-sellers are able to control price and transact directly with end-buyers. Moreover, in the case of ecommerce marketplaces, sellers and buyers are able to exploit the indirect network effects caused by participation from both types of marketplace users, sellers and buyers.

5 48. Market participants—including Amazon itself, retailers, and consumers—recognize
6 a distinct market for ecommerce platforms. In a response to a recent investigation by the United
7 States House of Representatives that asked Amazon to provide information regarding its
8 competitors, it produced internal documents indicating that, in fact, it has “No direct
9 competitors.”⁵³ Thus Amazon itself acknowledged its core business (at least for the Amazon
10 Marketplace product) is providing a marketplace rather than selling goods to consumers.

49. Similarly, U.S. retailers recognize that ecommerce platforms are a separate relevant
market. Almost half of Amazon's third-party sellers generate 81% to 100% of their revenues from
sales on the Amazon.com platform.⁵⁴ As its third-party seller, Molson Hart, succinctly puts it:
“[W]e have nowhere else to go and Amazon knows it.”⁵⁵

15 50. Consumers likewise view ecommerce platforms as a distinct market. As early as
16 2016, the internet-marketing firm BloomReach Inc. found that 55% of those surveyed first start
17 with Amazon when searching for products.⁵⁶ Consumer preference for the Amazon.com platform
18 as a starting point for product searches has only increased with time. A survey conducted by

⁵³ See U.S. House of Representatives Subcommittee on Antitrust, Commercial and Administrative Law, *Investigation of Competition in Digital Markets* (2020), https://judiciary.house.gov/uploadedfiles/competition_in_digital_markets.pdf?utm_campaign=4493-519 (“U.S. House Antitrust Report”), at page 255-56.

⁵⁴ J. Clement, *Percentage of e-commerce revenue from Amazon sales according to Amazon marketplace sellers in 2018*, Statista (May 4, 2019), <https://www.statista.com/statistics/259782/third-party-seller-share-of-amazon-platform/>.

25 || 55 *Supra* Hart.

⁵⁶ Spencer Soper, *More than 50% of Shoppers Turn First to Amazon in Product Search*, Bloomberg (Sept. 26, 2016), <https://www.bloomberg.com/news/articles/2016-09-27/more-than-50-of-shoppers-turn-first-to-amazon-in-product-search>.

Feedadviser in 2019 found that 66% of consumers start their search for new products on the Amazon.com platform and 74% start there when they are ready to buy a specific product.⁵⁷

51. Unlike traditional retail outlets, ecommerce platforms traditionally require consumers to create an account. These accounts not only serve as a repository for consumer-submitted data, such as address, telephone number, or payment card information, but also allow ecommerce platform operators to store data relating to consumer purchasing habits.⁵⁸

52. These distinctive facilities allow ecommerce platform operators to produce additional functionality for their platforms by engaging in a wide range of data analytics, to predict future purchasing patterns, manage supply chains, or simply recommend consumers additional products to buy on the platform.⁵⁹ As Lina Khan—recently nominated to be an FTC Commissioner by President Joe Biden—wrote in her seminal article: “The degree to which a firm can tailor and personalize an online shopping experience is different in kind from the methods available to a brick-and-mortar store – precisely because the type of behavior that online firms can track is far more detailed and nuanced.”⁶⁰

53. There is little cross-elasticity of demand between the use of ecommerce platforms and the use of other retail venues. A hypothetical monopolist in the ecommerce platform market could profitably impose a small but significant and non-transitory increase in price (“SSNIP”) in the form of an increased commission. (Such an increase—say, a 5% increase—would, for example, increase Amazon’s already highest-in-the-industry commission from 15% to 15.75%.) Because sellers must use ecommerce platforms to reach their customers, they could not (and therefore would not) switch away from the market in response to a SSNIP. Thus a SSNIP would

⁵⁷ Feedadvisor, *The 2019 Amazon Consumer Behavior Report*, <https://feedvisor.com/resources/amazon-trends/the-2019-amazon-consumer-behavior-report/>.

⁵⁸ Stigler Committee on Digital Platforms, *Final Report* (2019), <https://research.chicagobooth.edu/-/media/research/stigler/pdfs/digital-platforms---committee-report---stigler-center.pdf>, at 45.

⁵⁹ *Id.* at 48.

⁶⁰ Lina M. Khan, *Amazon's Antitrust Paradox*, 126 Yale L.J. 710, 764 (2017).

1 not cause a sufficient number of sellers or their buyers to switch away from the use of ecommerce
 2 platforms to render the SSNIP unprofitable to the hypothetical monopolist.

3 VI. MARKET POWER

4 54. Amazon is a monopolist in the market for ecommerce marketplaces, with an
 5 estimated share of over 70%.

6 55. Amazon's market power is directly evident by its power over price: over the span
 7 of five years, Amazon increased the cost of its ecommerce platform services by 42%, to a
 8 staggering 27 cents for each dollar spent by consumers on its platform.⁶¹ Yet, despite these
 9 meteoric price increases, Amazon increased its share of *all* online transactions (including non-
 10 Platform transactions) from 38.1% percent in 2016⁶² to roughly 50% in 2021.⁶³

11 56. At the same time, Amazon's hefty fees suppress output below what would prevail
 12 in a competitive world, absent its PMFN restraints. Absent those restraints, fees for sellers would
 13 be lower, enabling them to make more sales to consumers at lower prices. Absent Amazon's
 14 PMFNs, American consumers would have purchased more goods at lower prices over the past
 15 four years.

16 57. There is also significant circumstantial evidence of Amazon's market power in the
 17 ecommerce platform market. Amazon "reportedly controls about 65% to 70% of all U.S. online
 18 marketplace sales."⁶⁴ As of 2018, Amazon's next closest ecommerce marketplace competitors—
 19 eBay and Walmart—have a market share of only 6.6% and 3.7% respectively.⁶⁵

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⁶¹ *Supra* Weise.

23 62 "Amazon could be responsible for nearly half of U.S. e-commerce sales in 2017," Vox
 24 (Oct. 24, 2017), [https://www.vox.com/2017/10/24/16534100/amazon-market-share-ebay-walmart-](https://www.vox.com/2017/10/24/16534100/amazon-market-share-ebay-walmart-apple-e-commerce-sales-2017)
 apple-e-commerce-sales-2017.

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⁶³ *Supra* U.S. House Antitrust Report, at 255.

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⁶⁴ *Id.* at 255.

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⁶⁵ *Amazon Now Has Nearly 50% of US Ecommerce Market*, Emarketer (Jul. 16, 2018),
<https://www.emarketer.com/content/amazon-now-has-nearly-50-of-us-ecommerce-market>.

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1 58. Amazon's market power in the ecommerce platform market is further demonstrated
 2 by its must-have status for retailers. Due to indirect network effects and the fact that nearly three-
 3 quarters of consumers look to Amazon first when selecting an ecommerce platform,⁶⁶ most
 4 retailers cannot profitably operate their businesses without selling on Amazon, regardless of the
 5 price of that platform.

6 59. "[C]ompanies that once drew sufficient consumer traffic from search engines to
 7 their own sites are now compelled to become vendors or sellers on Amazon's platform — or
 8 forego access to a majority of online shopping traffic."⁶⁷ This "gives [Amazon] an unprecedented
 9 degree of structural power in the economy."⁶⁸ As early as 2016, the internet-marketing firm
 10 BloomReach Inc. found that 55% of those surveyed first start with Amazon when searching for
 11 products.⁶⁹ Consumer preference for the Amazon.com platform as a starting point has only
 12 increased with time. A survey conducted by Feedadviser in 2019 found that 66% of consumers
 13 start their search for new products on the Amazon.com platform and 74% start there when they are
 14 ready to buy a specific product.⁷⁰

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⁶⁶ "74% of consumers go to Amazon when they're ready to buy something. That should be keeping retailers up at night," CNBC (March 19, 2019), <https://www.cnbc.com/2019/03/19/heres-why-retailers-should-be-scared-of-amazon-dominating-e-commerce.html>.

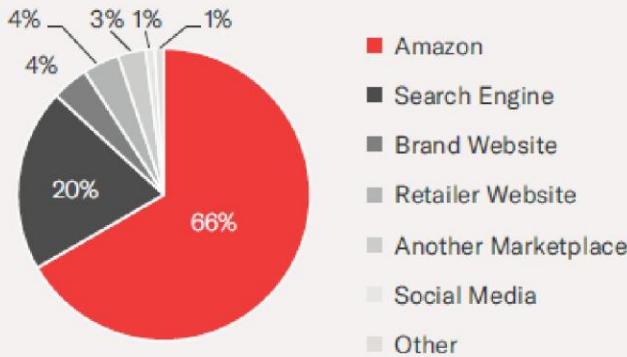
⁶⁷ *Supra* Mitchell.

⁶⁸ *Id.*

⁶⁹ Spencer Soper, *More than 50% of Shoppers Turn First to Amazon in Product Search*, BLOOMBERG, Sept. 26, 2016, <https://www.bloomberg.com/news/articles/2016-09-27/more-than-50-of-shoppers-turn-first-to-amazon-in-product-search>.

⁷⁰ Feedadvisor, *The 2019 Amazon Consumer Behavior Report*, <https://fv.feedvisor.com/rs/656-BMZ-780/images/Feedvisor-Consumer-Survey-2019.pdf>.

1
2 **Where Consumers Start Their Search for**
3 **New Products**



10 **Where Consumers Go When They Are Ready**
11 **to Buy a Specific Product**



20 60. With 600 million products and two million sellers on the Amazon.com platform
21 Amazon has unparalleled inventory, mostly housed in a sprawling network of roughly 100
22 warehouses scattered across the United States.⁷¹ Amazon has surpassed DHL to become the
23 world's largest provider of shipping and fulfillment services, giving it a vast edge over its

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27 ⁷¹ Nate Rattner and Annie Palmer, *This map shows how Amazon's warehouses are rapidly*
28 *expanding across the country*, CNBC (Jan. 19, 2020), [https://www.cnbc.com/2020/01/19/map-of-](https://www.cnbc.com/2020/01/19/map-of-amazon-warehouses.html)

1 competitors in the distribution of products.⁷² It delivers a little less than half of all items ordered
 2 on the Amazon.com platform and by 2022, it is expected to deliver 65% of them.⁷³

3 61. This also allows Amazon to wield tremendous power over its third-party sellers.
 4 Approximately 94% of them rely on Amazon to store and fulfill their orders; about 64% rely on
 5 Amazon exclusively for these services, and 37% rely on Amazon as the sole source of their
 6 income.⁷⁴

7 62. When Amazon made the decision to prioritize household essentials during the
 8 COVID-19 pandemic, it left these sellers in a bind because they could not sell the products stored
 9 in Amazon's warehouses. Sellers, who borrowed from Amazon, were even worse off. For
 10 example, Miles Szczurek, head of operations at the 3D-printing tool manufacturer AMX3d, said
 11 his company took out a small business loan with Amazon, and when it could not stock products in
 12 Amazon's warehouses, he feared it would be impossible to pay back: "When Amazon put this
 13 restriction in place, they made no adjustments to the terms of the loans."⁷⁵ He expressed concerns
 14 about the time it will likely take for Amazon to resume full service, adding: "I think this points to
 15 a significant weakness with a single venue having this much market share."⁷⁶

16 63. The Amazon.com platform accounts for 70% of all online marketplace sales.⁷⁷ In
 17 2018, it generated almost half of the revenue of all retail ecommerce in the United States, while its
 18 nine closest competitors had a distant 1.1%-6.6% share in revenue of the retail ecommerce
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21 ⁷² *Supra* Weise.

22 ⁷³ Emma Cosgove, *Amazon Logistics parcel volume will surpass UPS and FedEx by 2022*,
 23 Retail Dive (Dec. 16, 2019), <https://www.retaildive.com/news/amazon-logistics-volume-surpasses-ups-fedex-2022-morgan-stanley/569140/>.

24 ⁷⁴ *Amazon's New 'Essential Items' Policy Is Devastating Sellers*, Wired (Mar. 24, 2020),
 25 <https://www.wired.com/story/amazon-essential-items-policy-devastating-sellers/>.

26 ⁷⁵ *Id.*

27 ⁷⁶ *Id.*

28 ⁷⁷ *Supra* U.S. House Antitrust Report, at 255.

1 market.⁷⁸ Amazon has gained this market share in, large part, on an acquisition strategy that has
 2 focused on acquiring its potential competitors.⁷⁹

3 64. The market for ecommerce platforms is dominated by strong indirect network
 4 effects. These indirect network effects create substantial barriers to entry. *See e.g. Biden v.*
 5 *Knight First Amend. Inst. At Columbia Univ.*, 141 S. Ct. 1220, 1224 (2021) (“[T]oday’s dominant
 6 digital platforms derive much of their value from network size. The Internet, of course, is a
 7 network. But these digital platforms are networks within that network. . . . That these companies
 8 have no comparable competitors highlights that the industries may have substantial barriers to
 9 entry.”) (J. Thomas, concurring).

10 65. Leading economists have likewise observed that “[d]igital platforms combine
 11 economies of scale, low marginal costs, economies of scope through data and an installed base of
 12 users, network effects, multi-sidedness, and sometimes a global reach.”⁸⁰ The combination of
 13 these attributes “tend[s] to generate concentrated markets, or market structures containing few
 14 firms,” and, “the addition of inertial (or ‘sticky’) consumers these markets feature high entry
 15 barriers which make it difficult for new firms to enter the market to create competition.”⁸¹

16 66. Moreover, “large technology firms” like Amazon “can maintain market power in
 17 part because it is not easy for users to switch away from the incumbent’s technology.”⁸² For
 18 example, an online seller who has received hundreds of reviews and ratings on Amazon
 19 Marketplace cannot easily download and migrate this data to one of Amazon’s competitors but,

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 22 ⁷⁸ Marianne Wilson, *eMarketer: Amazon to capture 47% of all U.S. online sales in 2019*,
 23 Chain Store Age (Feb. 15, 2019), <https://chainstoreage.com/technology/emarketer-amazon-to-capture-47-of-all-u-s-online-sales-in-2019>.

24 ⁷⁹ *Supra* U.S. House Antitrust Report, at 262.

25 ⁸⁰ Testimony of Fiona M. Scott Morton, Ph.D., House Judiciary Committee (Mar. 7, 2019),
 26 <https://docs.house.gov/meetings/JU/JU05/20190716/109793/HHRG-116-JU05-Wstate-ScottMortonF-20190716.pdf>.

27 ⁸¹ *Id.*

28 ⁸² *Supra* U.S. House Antitrust Report, at 41.

1 instead, would have to start from scratch on a new platform.⁸³ These switching costs are
 2 sufficiently high that the ecommerce platform market is said to exhibit “lock-in” effects: Buyers
 3 and sellers stick with Amazon even though they may prefer the services of one of Amazon’s
 4 rivals.⁸⁴

5 67. Amazon designs its platform specifically to enhance these lock-in effects by,
 6 among other things, obfuscating the source of origin of sales (i.e., the third-party seller) on
 7 Amazon Marketplace. Amazon forbids third-party sellers from contacting buyers, and the order
 8 confirmation email and delivery packaging for third-party sales do not contain any reference to the
 9 seller while also featuring the Amazon brand front and center.⁸⁵ The ultimate effect is to lock-in
 10 sellers, and accordingly buyers as well, to the Amazon Marketplace, as sellers’ attempts to create
 11 their own e-commerce presence on other channels (without the Amazon customer base) would be
 12 “futile.”⁸⁶

13 68. Amazon’s anticompetitive restraints—specifically its PMFN—solidify its market
 14 power in the ecommerce platform market. Amazon’s competitors in the ecommerce platform
 15 market told the U.S. House that “as Amazon raises the costs to sellers, and requires that Amazon
 16 have the lowest prices available, for a seller to be able to make significant sales on its marketplace,
 17 these sellers will raise the price on competitor sites to match Amazon’s price.”⁸⁷ Without the
 18 ability to offer lower prices on goods, there is no incentive for competing ecommerce platforms to
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21 ⁸³ *Id.* at 42.

22 ⁸⁴ *Id.* at 41-42.

23 ⁸⁵ *Id.* at 258.

24 ⁸⁶ *Id.* (citation omitted).

25 ⁸⁷ *Id.* at 296 (citing Submission from Source 11, to H. Comm. on the Judiciary, 4 (Oct. 14,
 26 2019) (on file with Comm.); Submission from Jason Boyce, Founder & CEO, Avenue7Media
 27 (Sept. 25, 2020) (on file with Comm.) (“Amazon prohibiting sellers from offering lower prices on
 other online retail platforms clearly hurts consumers if the only way for sellers to regain their
 listing on Amazon is to raise their prices on other platforms or remove their listings all together,
 therefore limiting competition.”)).

offer lower prices on platform fees. Consequently, Amazon's massive market share cannot be challenged by competition.

3 69. The European Commission highlighted this phenomenon as well, stating that when
4 sellers cannot offer lower prices on competing ecommerce platforms, “it can be difficult for other
5 internet marketplaces that compete with Amazon, especially new platforms entering the market,”
6 to compete for customers.⁸⁸

A. Amazon is the subject of a government investigation for possible antitrust violations, including whether it uses its relationship with its third-party sellers to harm competition.

9 70. In the summer of 2019, the Washington Post reported that the FTC planned to
10 investigate Amazon as part of a broad investigation into large technology companies.⁸⁹ This
11 followed an earlier announcement that the FTC had established a special task force to monitor the
12 big tech companies and to investigate “any potential anticompetitive conduct in those markets, and
13 tak[e] enforcement actions when warranted.”⁹⁰ According to Gene Kimmelman, the president of
14 Public Knowledge, a Washington-based consumer advocacy group: “This should be a wake-up
15 call to both Google and Amazon to behave themselves because it at least shows that the Justice
16 Department and FTC are thinking about them.”⁹¹

17 71. Vox reported that the FTC started questioning some of Amazon's competitors
18 about its business practices, according to someone briefed on the discussions.⁹² Bloomberg also

⁸⁸ European Commission, *Germany and United Kingdom: Antitrust Cases against Amazon formally closed*, https://ec.europa.eu/competition/ecn/brief/05_2013/amaz_deuk.pdf.

⁸⁹ Tony Romm, *Amazon could face heightened antitrust scrutiny under a new agreement between U.S. regulators*, Wash. Post (June 1, 2019) <https://www.washingtonpost.com/technology/2019/06/02/amazon-could-face-heightened-antitrust-scrutiny-under-new-agreement-between-us-regulators/>.

90 *Id*

91 *Id*

⁹² Jason Del Rey, *Amazon may soon face an antitrust probe. Here are 3 questions the FTC is asking about it.*, Vox (Jun. 4, 2019), <https://www.vox.com/recode/2019/6/4/18651694/amazon-ftc-antitrust-investigation-prime>.

1 reported that FTC investigators began interviewing Amazon's third-party sellers as part of a
 2 sweeping probe to determine whether Amazon uses its market power to hurt competition.⁹³
 3 Reportedly, several attorneys and an economist conducted interviews that typically lasted about 90
 4 minutes.⁹⁴

5 72. According to Michael Kades, who spent 20 years at the FTC, the length of the
 6 interviews and the manpower devoted to examining Amazon point to a serious inquiry: "Early in
 7 an investigation, that's a sign of staff doing a serious job," Kades said. "They're spending lots of
 8 time with witnesses and trying to really understand what they're saying."⁹⁵ Reportedly, regulators
 9 are skeptical that shoppers and suppliers have real alternatives to Amazon.⁹⁶

10 73. Jennifer Rie, an analyst at Bloomberg Intelligence who specializes in antitrust
 11 litigation, opined that FTC investigators are "in a background phase," when they are "trying to
 12 learn as much as they can about the industry from people who aren't the target of their
 13 investigation."⁹⁷

14 74. Diana Moss, president of the American Antitrust Institute, a nonprofit that
 15 advocates for aggressive antitrust enforcement, further noted that "the central question in an
 16 inquiry like this" is whether "merchants are so reliant on Amazon for sales that they are unwilling
 17 to offer better prices on other platforms like Walmart and EBay" and whether that can hurt
 18 competition.⁹⁸

19 75. The Free & Fair Markets Initiative likewise applauded the FTC's efforts: "It is
 20 welcome news to see that regulators are finally getting serious about taking on the unfair
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23 ⁹³ *Supra* Soper & Brody.

24 ⁹⁴ *Id.*

25 ⁹⁵ *Id.*

26 ⁹⁶ *Id.*

27 ⁹⁷ *Id.*

28 ⁹⁸ *Id.*

1 advantage Amazon has staked out on its platform,” said Robert B. Engel, a spokesperson for the
 2 group, in a statement.⁹⁹

3 76. The House Judiciary Committee has held multiple hearings as part of its antitrust
 4 investigation into digital markets, touching on issues like data privacy, innovation, the free press
 5 and competition. As part of that investigation, the Committee requested documents and
 6 information on Amazon’s market share and closest competitors.¹⁰⁰

7 77. In late July 2020, Amazon CEO Jeff Bezos testified in person at a hearing entitled
 8 “Online Platforms and Market Power, Part 6: Examining the Dominance of Amazon, Apple,
 9 Facebook, and Google,” where the Committee raised concerns about Amazon’s market power and
 10 whether it gives Amazon an unfair advantage over third-party merchants when it competes with
 11 them to sell similar products on its own platform.

12 78. In a written statement, the presiding Chair expressed concerns that Amazon’s
 13 dominance in “online marketplace sales” presents a risk that a single action by that company could
 14 “affect hundreds of millions of us in profound and lasting ways.”¹⁰¹

15 **VII. AMAZON HAS UNLAWFULLY MONOPOLIZED THE MARKET FOR
 ECOMMERCE PLATFORMS**

16 79. Amazon has unlawfully monopolized the market for ecommerce platforms through
 17 a straightforward strategy—blocking any rivals from offering lower prices. Knowing that
 18 Amazon.com is a must-have for sellers, Amazon makes all sellers agree to the PMFN, and sellers
 19 therefore agree to not sell their products at lower prices through any non-Amazon channel. This
 20 prevents price competition on Amazon’s commissions, which would put downward pressure on
 21 those commissions and lower retail prices for consumers.

23 ⁹⁹ Ben Fox Rubin, *FTC investigation into Amazon reportedly gearing up*, C/net (Sept. 11,
 24 2019), <https://www.cnet.com/news/ftc-investigation-into-amazon-reportedly-gearing-up/>.

25 ¹⁰⁰ Letter from U.S. House of Representatives Committee on the Judiciary to Jeff Bezos,
 26 Amazon CEO (Sept. 13, 2019),
<https://judiciary.house.gov/sites/democrats.judiciary.house.gov/files/documents/Amazon%20RFI%20-%20Signed.pdf>.

27 ¹⁰¹ *Supra* Press Release (Jul. 29, 2020).

1 80. As explained above, Amazon implements its price restraint by contracts and
 2 coercion. When a seller registers with Amazon Marketplace, “it agrees to the terms of the
 3 Amazon Services Business Solutions Agreement (BSA) and the policies incorporated in that
 4 agreement.¹⁰² The BSA establishes rules for selling on the Amazon.com platform, and any seller
 5 holding an Amazon Seller Account must adhere to them.¹⁰³ It costs less to sell on the sellers’ own
 6 websites and other third-party marketplaces, and in a competitive market third-party sellers would
 7 sell their products at lower prices on other platforms because their cost structure allows them to do
 8 so while still making more than on the Amazon.com platform. But the BSA prevents them from
 9 offering a competitive price on external platforms.

10 81. To enforce this provision, Amazon deploys an army of algorithms and robots to
 11 crawl the internet and detect violations. Amazon’s “automated system continually checks and
 12 informs the seller within 15 minutes if a violation has occurred.”¹⁰⁴ If Amazon finds that a seller
 13 violated this restraint, it issues a policy warning in the seller’s central account.¹⁰⁵ Violations could
 14 result in removal of the seller’s product listing or suspension of the seller’s account.¹⁰⁶ It was
 15 reported that “Amazon even checks [the seller’s] listings for similar products that are differently
 16 described, by color or size, for example. In other words, there’s no hiding place.”¹⁰⁷

17 82. Jarvin Karnani, who has been selling on Amazon Marketplace for two years, told
 18 the FTC, “[I]f Amazon suspends you, it’s like a death knell . . . [W]hen Amazon shuts you off,
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21 ¹⁰² Irwin Decl., ¶ 4.

22 ¹⁰³ *Amazon Pricing Policy*, Feedadvisor, <https://feedvisor.com/university/amazon-pricing-policy/>.

23
 24 ¹⁰⁴ Rupert Heather, *The Little-Known Amazon Pricing Rule that Would Burn Your Business*,
 Xsellco, <https://www.xsellco.com/resources/amazon-pricing-rule-burn-business/>.

25 ¹⁰⁵ *Id.*

26 ¹⁰⁶ *Id.* Amazon’s contracts with its third-party sellers are confidential. Plaintiffs therefore
 rely on publicly available third-party sources for their content.

27 ¹⁰⁷ *Id.*

1 they sit on your money for 90 days and there's nothing you can do.”¹⁰⁸ To ensure compliance
 2 with Amazon’s price policies, some sellers have come to rely on an external service to replicate
 3 their prices across multiple marketplaces.¹⁰⁹

4 83. Amazon continues to enforce its anticompetitive restraint of third-party sellers to
 5 this day, although it now relies on a different contractual provision than it did before March 2019.
 6 Until then, the BSA included an express “price parity” (*i.e.*, platform most favored nation or
 7 “PMFN”) provision, governing the price of products the seller offered for sale through its or any
 8 of its affiliates’ other retail channels other than physical stores.¹¹⁰ The PMFN required that
 9 sellers:

10 maintain parity between the products you offer through Your Sales
 11 Channels and the products you list on any Amazon Site by ensuring
 12 that ... the purchase price and every other term of sale ... is at least as
 13 favorable to Amazon Site users as the most favorable terms via Your
 14 Sales Channels (excluding consideration of Excluded Offers).[¹¹¹]

15 84. In March 2019, under threat of an FTC investigation about this specific restraint,
 16 Amazon officially “withdrew” its PMFN provision.¹¹² But Amazon continues to enforce its illegal
 17 restraint under the new “fair pricing” provision.¹¹³ Amazon’s “fair pricing” policy states that
 18 “Amazon regularly monitors the prices of items on our marketplaces,” and that if it sees “pricing
 19 practices” on the Amazon.com platform “that harm[] customer trust, Amazon can remove the Buy

20 ¹⁰⁸ Spencer Soper & Ben Brody. *Amazon Probed by U.S. Antitrust Officials Over*
 21 *Marketplace*, Bloomberg (Sept. 11, 2019), <https://www.bloomberg.com/news/articles/2019-09-11/amazon-antitrust-probe-ftc-investigators-interview-merchants>.

22 ¹⁰⁹ *Supra* Heather.

23 ¹¹⁰ Irwin Decl., Ex. A at 14 (definition) and 18 (section S-4 Parity with Your Sales Channel).

24 ¹¹¹ *Id.*, Ex. A at 18.

25 ¹¹² See, e.g., Greg Magana, *Amazon is ending its restrictive pricing practice*, Business Insider (Mar. 13, 2019), <https://www.businessinsider.com/amazon-ends-restrictive-pricing-parity-2019-3>.

26 ¹¹³ See, e.g., Guadalupe Gonzalez, *You’re No Longer Required to Sell Products for Less on Amazon. The Problem? If You Don’t, You’ve Got Another Penalty Coming*, <https://www.inc.com/guadalupe-gonzalez/amazon-removes-price-parity-not-fair-price-rule-third-party-sellers-antitrust-violations.html>.

1 Box, remove the offer, suspend the ship option, or, in serious or repeated cases, suspend[] or
 2 terminat[e] selling privileges.”¹¹⁴ One of the pricing practices Amazon identifies as “harmful” to
 3 customer trust is “[s]etting a price on a product or service that is significantly higher than recent
 4 prices offered *on or off* Amazon.”¹¹⁵

5 85. Amazon’s “fair pricing” provision reimposes the requirement of its former price
 6 parity provision. Both require Amazon third-party sellers to maintain equal or higher prices on
 7 other platforms or lose privileges on the Amazon.com platform. Under the “fair pricing”
 8 provision, “[a]ny single product or multiple products packages must have a price that is equal to or
 9 lower than the price of the same item being sold by the seller on other sites or virtual
 10 marketplaces.”¹¹⁶ The “fair pricing” provision “applies to both the individual product price as
 11 well as the collective price that the item or items are being sold for.”¹¹⁷ Third-party sellers receive
 12 “price alerts” with a warning from Amazon that shows the product, the price on Amazon, and the
 13 price found elsewhere on the web without identifying the competing website.¹¹⁸

14 86. The outcome is the same both under the PMFN clause and under the “fair pricing”
 15 provision: both have “the effect of getting sellers to raise prices elsewhere, rather than risk lower
 16 revenue from Amazon.”¹¹⁹ This, in turn, leads to higher prices on all sites, rather than lower
 17 prices on all sites, due to price competition between Amazon and other ecommerce outlet
 18

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 20 ¹¹⁴ *Amazon Marketplace Fair Pricing Policy*, Amazon Seller Central,
 21 https://sellercentral.amazon.com/gp/help/external/G5TUVJKZHUVVMN77V?language=en_US&ref=efph_G5TUVJKZHUVVMN77V_cont_521.

22 ¹¹⁵ *Id.* (emphasis added).

23 ¹¹⁶ *Amazon Pricing Policy*, Feedadvisor, <https://feedvisor.com/university/amazon-pricing-policy/>.

24 ¹¹⁷ *Id.*

25 ¹¹⁸ Spencer Soper, *Amazon Squeezes Sellers That Offer Better Prices on Walmart*, Bloomberg
 26 (Aug. 5, 2019), <https://www.bloomberg.com/news/articles/2019-08-05/amazon-is-squeezing-sellers-that-offer-better-prices-on-walmart>.

27 ¹¹⁹ Nick Statt, *Amazon price alerts are leading sellers to raise prices on Walmart or risk losing perks*, The Verge (Aug. 5, 2019), <https://www.theverge.com/2019/8/5/20755342/amazon-marketplace-antitrust-sellers-raise-prices-walmart-competition-ftc>.

1 providers that would have otherwise offered lower commissions, or whose lower commission
 2 levels would have created actual price competition between them and Amazon. Had Amazon not
 3 restrained that price competition, lower commissions for sellers on both Amazon and other
 4 ecommerce outlet providers would have translated into lower consumer prices.

5 87. Consider Adorama, a seller of photography equipment that runs its own website
 6 www.adorama.com. Reflecting the must-have nature of the Amazon.com Marketplace, even
 7 though Adorama has a direct-to-consumer website, Adorama sells a large volume of products on
 8 Amazon.com. To sell on Amazon.com, Adorama must inflate its prices to pay for Amazon's
 9 roughly 30% commission. And even though it could sell the same products profitably at a lower
 10 price on other platforms, including its own website, Adorama must raise its prices on its own
 11 website to comply with Amazon's price restraint. If it is caught offering a lower price to
 12 consumers elsewhere by Amazon's algorithm, Adorama faces the catastrophic loss of selling
 13 privileges with Amazon.

14 88. Eighty percent of Amazon's third-party sellers also sell their products on other
 15 online retail websites, most commonly on eBay, their own websites, or Walmart.¹²⁰

16 89. Each of these sellers must price their products on other websites based on the high
 17 cost of selling on the Amazon.com platform, rather than setting competitive prices commensurate
 18 with lower-cost platforms and thereby forcing Amazon to compete with those other platforms by
 19 reducing its commission levels.

20 90. Amazon injures consumers by driving up the price of consumer goods. For
 21 example, Amazon third-party seller Molson Hart reports that a \$150 item sold on Amazon would
 22 make his company the same profit as an item sold for \$37 less on his company website:

23
 24
 25 ¹²⁰ Rani Molla & Jason Del Rey, *A fifth of professional Amazon merchants sell more than \$1*
million a year — double the share from last year, Vox (May 23, 2018),
<https://www.vox.com/2018/5/23/17380088/amazon-sellers-survey-third-party-marketplace-walmart-ebay>; Catie Grasso, *The State of the Amazon Marketplace 2019*, Feedadvisor (May 15, 2019), <https://feedvisor.com/resources/amazon-trends/the-state-of-the-amazon-marketplace-2019/>.

1 We designed, manufactured, imported, stored, shipped the item, and
 2 then we did customer service. Amazon hosted some images, swiped
 3 a credit card, and got \$40 [for a \$150 toy].

4 This is the core problem. Were it not for Amazon, this item would
 5 be \$40 cheaper. And this is how Amazon's dominance of the
 6 industry hurts consumers.[¹²¹]

7 Nevertheless, they must sell at the same levels on both sites, and Molson Hart's (as well as all
 8 other third-party sellers') ability to constrain Amazon's commission through competition (which
 9 would lead to lower consumer prices) is eliminated.

10 91. Many of Amazon's marketplace competitors already offer lower commissions in
 11 the real world—lower commissions that would generate lower prices for consumers in the absence
 12 of Amazon's illegal restraint. For example, Amazon's third-party sellers incur considerably lower
 13 fees when selling on Amazon's nearest competitor, eBay. As the following examples illustrate, in
 14 total Amazon charges its third-party sellers about 23% to sell a \$30 book, while eBay charges
 15 16%, and Amazon charges its third-party sellers 31% to sell a \$15 DVD, while eBay charges 21%
 16 to sell on its platform:¹²²

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25 ¹²¹ Molson Hart, *How Amazon's Business Practices Harm American Consumers: Why*
 26 *Amazon Needs a Competitor and Why Walmart Ain't It*, Medium (Jul. 18, 2019),
 27 <https://medium.com/swlh/amazon-needs-a-competitor-and-walmart-aint-it-5997977b77b2>.

28 ¹²² Max Godin, *Selling on Amazon vs eBay – Discover Which is Better and Why*, CrazyLister
 29 (May 15, 2018), <https://crazylister.com/blog/selling-on-amazon-vs-ebay/>.

Example 1: Books		
Sale Price	\$30.00	
	 eBay	 Amazon
Final Value Fee	\$3.40	\$4.50
Closing Fee	\$0.00	\$1.35
Listing Fee	\$0.30	\$0.99
Paypal Fee	\$1.17	\$0.00
Total Fees	\$4.87	\$6.84
Total Profit	\$25.13	\$23.16
Profit Margin	83.77%	77.20%

Example 2: DVDs		
Sale Price	\$15.00	
	 eBay	 Amazon
Final Value Fee	\$2.12	\$2.25
Closing Fee	\$0.00	\$1.35
Listing Fee	\$0.30	\$0.99
Paypal Fee	\$0.75	\$0.00
Total Fees	\$3.16	\$4.59
Total Profit	\$11.85	\$10.41
Profit Margin	78.97%	69.40%

92. Walmart operates its own competing online marketplace platform. Many of Amazon's third-party sellers also sell there and incur fewer (and lower) fees. Unlike Amazon, Walmart does not charge any registration or subscription fees.¹²³ For example, an Amazon

26 ¹²³ Marketplace Commission Rates Comparison: Amazon, eBay and Walmart (2021 Update),
27 Zentail (Mar. 23, 2021), <https://www.zentail.com/blog/marketplace-commission-rates-comparison-jet-com-walmart-amazon-ebay>.

1 account manager—a service that would be free on Walmart—costs \$1600 per month + 0.3% of
 2 total sales on Amazon, capped at \$5,000 per month.¹²⁴ Amazon added this service (and the
 3 additional fee) to address the oft-cited complaint from its third-party sellers that Amazon's largely
 4 faceless organization makes it impossible for them to navigate glitches and changing rules.¹²⁵
 5 About 92% of third-party sellers rely on storage, packaging, and delivery by Amazon (Fulfillment
 6 by Amazon or FBA), and until 2020, Walmart had no equivalent of this service.¹²⁶ One non-
 7 service-related cost to FBA sellers is a \$0.20 per unit charged to provide individual sku stickers—
 8 otherwise, Amazon will store a seller's products with other sellers' inventory, and “if other sellers
 9 have sent in a counterfeit product or used-condition product that they are trying to pawn off as a
 10 new-condition product, now the new seller may get itself into trouble with Amazon for selling a
 11 problematic product to a customer even if it was technically not their product.”¹²⁷ Walmart has no
 12 equivalent fee.

13 93. “A staggering number (82%) of consumers cited price as a very important factor
 14 when buying a product on Amazon.”¹²⁸ But Amazon’s PMFN has the effect of *reducing* price
 15 competition between ecommerce platforms, thereby maintaining its market dominance. Third-
 16 party sellers, who would have sold their products for less, for example, on their own websites
 17

18 ¹²⁴ Strategic Account Services-Core, Amazon, [https://sell.amazon.com/programs/paid-
 19 services.html?ref_=sus_soa_rd&](https://sell.amazon.com/programs/paid-services.html?ref_=sus_soa_rd&).

20 ¹²⁵ Hilary Milnes, *Amazon is chasing growth and shifting resources to third-party sellers*,
 21 Digiday (Jan. 31, 2019), [https://digiday.com/marketing/amazon-chasing-growth-shifting-
 resources-third-party-sellers/](https://digiday.com/marketing/amazon-chasing-growth-shifting-resources-third-party-sellers/).

22 ¹²⁶ David Hamrick, *Amazon FBA vs FBM Comparison Guide*, Jungle Scout (Mar. 4, 2020),
 23 <https://www.junglescout.com/blog/amazon-fba-vs-fbm/>; Melissa Repko, Walmart steps up
 24 competition with Amazon by fulfilling orders for third-party vendors, CNBC (Feb. 25, 2020),
<https://www.cnbc.com/2020/02/25/walmart-wants-to-make-it-easier-for-third-party-vendors.html>.

25 ¹²⁷ James Thompson, *Amazon Selling Pitfalls Even the Savviest Sellers Forget*, Big
 Commerce, [https://www.bigcommerce.com/blog/amazon-selling-pitfalls-problems/#fulfillment-
 by-amazon](https://www.bigcommerce.com/blog/amazon-selling-pitfalls-problems/#fulfillment-by-amazon).

26 ¹²⁸ Catie Grasso, *Amazon Pricing Strategy: How Much Should You Sell a Product For?*,
 27 Feedadvisor (Jan. 31, 2020), [https://feedvisor.com/resources/marketplace-fees-policies/amazon-
 pricing-strategy/](https://feedvisor.com/resources/marketplace-fees-policies/amazon-pricing-strategy/).

1 (e.g., by avoiding Amazon's estimated 15% fee),¹²⁹ were prevented from selling at lower prices.¹³⁰
 2 The reduced price competition means that Amazon is no longer meaningfully constrained from
 3 raising or maintaining its fees to third-party sellers at supracompetitive levels, which in turn leads
 4 to supracompetitive consumer prices.

5 94. As noted, Amazon came under fire for its PMFN in December 2018, when Senator
 6 Blumenthal called for an FTC investigation of the practice.¹³¹ Years earlier, Amazon withdrew
 7 this very practice in Europe under pressure from British and German regulators.¹³² In response to
 8 the Blumenthal letter, Amazon also pretended to withdraw its PMFN in the U.S. in March of
 9 2019.¹³³ At the time, Dani Nadel, president of Feedvisor, a company that advises Amazon sellers,
 10 expected it to be a watershed moment that would lead "the greater e-commerce landscape" to be
 11 "much more dynamic."¹³⁴ Likewise, David Simnick, co-founder and CEO of Soapbox, a
 12 Washington, D.C.-based soap and shampoo maker that sells on Amazon, reported that when he
 13 learned that Amazon was revoking its PMFN, "I almost did a back flip in the hotel gym."¹³⁵

14 95. But Amazon continues to punish retailers, who price lower on other sites.¹³⁶
 15 Despite Amazon's official withdrawal of the price parity provision, the Feedadviser website

17 ¹²⁹ *Amazon Seller Fees: The Cost of Selling on Amazon in 2020.*, Xsellco,
 18 <https://www.xsellco.com/resources/amazon-seller-fees/>; *supra* Hart ("Amazon takes a 15%
 19 commission on every product we sell on their website. We don't have this fee when we sell toys
on our own website, so we could sell our products for 15% less and make roughly the same
 amount of money as we do on Amazon.").

20 ¹³⁰ Letter from Senator Richard Blumenthal to Joseph Simons, Federal Trade Commission
 21 Chair (Dec. 19, 2018), <https://www.blumenthal.senate.gov/imo/media/doc/12.19.18%20-%20FTC%20-%20Price%20Parity.pdf>.

22 ¹³¹ *Id.*

23 ¹³² *Id.*

24 ¹³³ Catherine Shu, *Amazon Reportedly Nixes Its Price Parity Requirement for Third-Party*
 25 *Sellers in the U.S.*, Tech Crunch (Mar. 11, 2019), <https://techcrunch.com/2019/03/11/amazon-reportedly-nixes-its-price-parity-requirement-for-third-party-sellers-in-the-u-s/>.

26 ¹³⁴ *Supra* Howland.

27 ¹³⁵ *Supra* Gonzalez.

28 ¹³⁶ *Supra* Hart; Gonzalez.

1 reported in 2020 that “many sellers are still operating by the price parity rule *in fear that their*
 2 *account will be impacted as a result.*”¹³⁷

3 96. In fact, while Amazon claimed it had withdrawn its PMFN, it began to enforce a
 4 “fair pricing” provision that has the same effect as its former “price parity” provision.¹³⁸ Whereas
 5 the “price parity” provision prohibited sellers from offering cheaper deals through competing retail
 6 ecommerce channels, the “fair pricing” rule likewise penalizes merchants who sell their products
 7 at a cheaper price on a competing platform by removing the product from the Buy Box,
 8 suspending shipping options, and terminating selling privileges.¹³⁹ Products outside the Buy Box
 9 are overlooked by the algorithms Amazon uses to determine which products shoppers see on the
 10 platform.¹⁴⁰

11 97. The “Buy Box” is the white box on the right side of the product details page where
 12 shoppers can click “Add to Cart” or “Buy Now.” It is a critical listing for third-party sellers. Over
 13 80% of Amazon purchases made on desktops are done via the Buy Box, and due to the smaller
 14 screen size, an even higher percentage of mobile Amazon purchases are made through the Buy
 15 Box option.¹⁴¹

16 98. When users click the “Add to Cart” button on the Amazon.com platform, they are
 17 buying the Buy Box winner’s product.¹⁴² Similarly, when a user opts for the “Buy Now” button
 18 that, too, will lead to the Buy Box owner’s product..¹⁴³ Over 90% of sales occur using the Buy
 19

20

21 ¹³⁷ *Supra Amazon Pricing Strategy: How Much Should You Sell a Product For?* (emphasis
 22 added).

23 ¹³⁸ *Supra* Gonzalez.

24 ¹³⁹ *Id.*

25 ¹⁴⁰ *Supra*, Soper, *Amazon Squeezes Sellers That Offer Better Prices on Walmart*.

26 ¹⁴¹ Conor Bond, *Why You Need the Amazon Buy Box—and How to Get It*, Ecommerce
 27 Strategy (Aug. 27, 2019), <https://www.wordstream.com/blog/ws/2018/10/03/amazon-buy-box>.

28 ¹⁴² *Supra* Zeibak.

29 ¹⁴³ *Id.*

1 Box.¹⁴⁴ Eligibility depends on a number of factors, including the seller's reputation, price,
 2 efficiency, and whether the seller is selling its product for a lower price through competing retail
 3 ecommerce channels.¹⁴⁵

4 99. When Amazon discovers that a third-party seller offers the same product on another
 5 site at a lower price, it sends a pricing alert that warns the seller that its product is no longer
 6 eligible for the Buy Box. The effect is chilling for most third-party sellers, who cannot afford to
 7 jeopardize their sales on Amazon by offering better deals on other sites.¹⁴⁶ Jason Boyce, a former
 8 Amazon third-party seller, who runs a consulting firm, Avenue 7 Media, instructs clients to offer
 9 the same prices on all sites to avoid losing prominence on Amazon even if they can afford to sell
 10 for less on other sites. He explains: "Amazon is in control of the price, not the merchant."¹⁴⁷

11 100. For example, retailer David Simnick reports that his sales plunge as much as 40-
 12 50% a day when his listings lose the Buy Box, and that he can reclaim the Buy Box only if he
 13 changes its pricing either at the Amazon.com platform or at the cheaper retailer, so that both
 14 offerings are priced equally.¹⁴⁸ He said that despite the purported withdrawal of Amazon's
 15 PMFN, his company had about six different products removed from the Buy Box option when it
 16 sold some of the same products at Target for just \$1 less.¹⁴⁹

17 101. Molson Hart, whose company, Viahart, sells toys online, says that 98% of its sales
 18 come from the Amazon.com platform and that other platforms like eBay and Walmart account for
 19 less than 2% of his company's revenue.¹⁵⁰ He confirmed Amazon continues to punish sellers who
 20

21 ¹⁴⁴ *Id.*

22 ¹⁴⁵ *Id.*

23 ¹⁴⁶ *Supra*, Soper, *Amazon Squeezes Sellers That Offer Better Prices on Walmart*.

24 ¹⁴⁷ *Id.*

25 ¹⁴⁸ *Supra* Gonzalez.

26 ¹⁴⁹ *Id.*

27 ¹⁵⁰ Spencer Soper & Ben Brody, *Amazon Probed by U.S. Antitrust Officials Over Marketplace*, Bloomberg (Sept. 11, 2019), <https://www.bloomberg.com/news/articles/2019-09-11/amazon-antitrust-probe-ftc-investigators-interview-merchants>.

1 list prices on other websites for less than the price on Amazon: “If we sell our products for less on
 2 channels outside Amazon and Amazon detects this, our products will not appear as prominently in
 3 search and, if you do find them, they will lose their prime check mark and with that, their sales.”¹⁵¹

4 **VIII. AMAZON’S CONDUCT HARMS CONSUMERS AND OVERALL COMPETITION**

5 102. Amazon’s conduct has led to overall supracompetitive prices, reduced output, and
 6 reduced quality.

7 103. As noted, selling on Amazon Marketplace is not cheap.¹⁵² Amazon’s average “all-in”
 8 commissions for each transaction on the Amazon.com marketplace are roughly 27%.¹⁵³

9 104. These commissions greatly exceed cost, and are therefore supracompetitive. The
 10 Amazon Marketplace has been described as a “cash cow” and analysts have estimated the Amazon
 11 Marketplace has generated around **\$120 billion** in revenue for Amazon in a single year.¹⁵⁴

12 105. During the pandemic, Amazon’s stock price rose a staggering 75% in 2020, almost
 13 doubling in value.¹⁵⁵ Amazon’s overall profitability is so high that its founder, Jeff Bezos, is the
 14 richest person in the entire world, with a net worth of over \$170 billion.¹⁵⁶ Mr. Bezos has recently
 15 purchased a “superyacht” that is 417 feet long with an estimated cost of \$500 million.¹⁵⁷ The new
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 19 ¹⁵¹ *Supra* Hart.

20 ¹⁵² *See, e.g., supra* Hart.

21 ¹⁵³ Karen Weise, *Prime Power: How Amazon Squeezes the Businesses Behind Its Store*, New
 22 York Times (Dec. 19, 2019), <https://www.nytimes.com/2019/12/19/technology/amazon-sellers.html>.

23 ¹⁵⁴ *Supra* Danziger.

24 ¹⁵⁵ Allison Morrow, *Jeff Bezos’ superyacht is so big it needs its own yacht*, CNN Business
 (May 10, 2021), <https://www.cnn.com/2021/05/10/business/jeff-bezos-yacht/index.html>

25 ¹⁵⁶ Dan Moskowitz, *The 10 Richest People In the World*, Investopedia (May 6, 2021)m,
 26 <https://www.investopedia.com/articles/investing/012715/5-richest-people-world.asp>.

27 ¹⁵⁷ Spencer Soper & Ben Brody, *Amazon Probed by U.S. Antitrust Officials Over
 Marketplace*, Bloomberg (Sept. 11, 2019), <https://www.bloomberg.com/news/articles/2019-09-11/amazon-antitrust-probe-ftc-investigators-interview-merchants>.

1 yacht is so massive that it needs a second “support yacht” to provide enough space to land
 2 helicopters.¹⁵⁸

3 106. In the absence of the PMFN, Amazon would not be able to maintain
 4 supracompetitive commissions, and instead competition would drive commissions to cost. These
 5 supracompetitive commissions affect both sellers and consumers that use the Amazon
 6 Marketplace.

7 107. If Amazon Marketplace commissions decreased to competitive levels, sellers
 8 would be able to sell more products at lower prices and enjoy higher revenues. And consumers
 9 would be able to afford to buy more goods at lower prices. In a more competitive market with
 10 competitive commissions, sellers would compete away some of the commission savings, resulting
 11 in lower retail prices for consumers. Thus when Amazon imposes supracompetitive commissions,
 12 both sellers and buyers are harmed.

13 108. Absent Amazon’s anticompetitive price policies, sellers would have set a lower
 14 price on a platform with lower fees than Amazon, or an even lower price on the seller’s own
 15 website. For example, a customer who purchased a \$150 toy on Viahart (the same price
 16 concurrently offered at Amazon) paid \$37 more for the toy than if the seller was able to sell the
 17 product for \$37 less on its own website, while making the same profit.¹⁵⁹ Competition from other
 18 websites and platforms would have forced Amazon to reduce its own commissions to competitive
 19 levels as well, and thus Amazon purchasers would have similarly paid the lower price (\$113).

20 109. Amazon’s conduct has also reduced output. In a world without Amazon’s PMFN,
 21 retail prices would have been lower, leading to greater demand and more units sold. More sellers
 22 would have come to market as well if offered lower, competitive commission rates.

23 110. Amazon’s conduct has also reduced quality. Amazon has blocked robust
 24 competition among platforms that would have involved competition among many dimensions

25
 26 ¹⁵⁸ *Id.*

27 ¹⁵⁹ Spencer Soper & Ben Brody. *Amazon Probed by U.S. Antitrust Officials Over*
 28 *Marketplace*, Bloomberg (Sept. 11, 2019), <https://www.bloomberg.com/news/articles/2019-09-11/amazon-antitrust-probe-ftc-investigators-interview-merchants>.

1 including but not limited to price. By doing so, Amazon has largely been able to continue as a
 2 monopolist ecommerce platform without the threat of competition. This has harmed innovation
 3 and inhibited the development of new platform features.

4 111. Amazon's PMFN has a broad reach, encompassing virtually all consumer products.
 5 Consumers who make purchases from competing retail ecommerce channels of any of the
 6 hundreds of millions of products concurrently offered at the Amazon.com platform are reasonably
 7 likely to be injured in the future by Amazon's current PMFN.

8 112. There are well-known anticompetitive effects that result from the imposition of
 9 MFN clauses by companies, like Amazon, with durable market power.¹⁶⁰ As noted, PMFNs are a
 10 particular category of MFNs that occur when an online platform requires that providers using its
 11 platform not offer their products or services at a lower price on other platforms. Economists
 12 recognize that PMFNs can harm competition by "keeping prices high and discouraging the entry
 13 of new platform rivals."¹⁶¹ PMFNs guarantee that other platforms cannot charge a "lower final
 14 price, not because the focal platform has worked to ensure that it has the lowest cost, but rather
 15 because it has contracted for competitors' prices to be no lower."¹⁶²

16 113. By deploying its PMFN, Amazon can ensure that the retail prices set in the
 17 Amazon Marketplace (and which are paid directly to Amazon) are equal to or better than the
 18 prices offered in any rival distributor's storefront. Thus, the Amazon PMFN gives Amazon the
 19 ability to police the prices set on rival storefronts. PMFNs disincentivize sellers from offering low
 20 prices, because discounts must be offered to all buyers.¹⁶³

21 114. PMFNs also create artificial barriers to market entry:

22
 23
 24¹⁶⁰ See generally Steven C. Salop & Fiona Scott Morton, *Developing an Administrable MFN Enforcement Policy*, 27 Antitrust ABA 15, 18 (Spring 2013).

25¹⁶¹ Jonathan B. Baker & Fiona Scott Morton, *Antitrust Enforcement Against Platform MFNs*, 127 Yale L.J. 2176, 2201 (May 2018) ("Baker I").

26¹⁶² Baker I at 2178.

27¹⁶³ Baker I at 2179.

[S]uppose an entrant wishes to gain customers by charging a lower price (perhaps because it has no established brand name or installed base). It can profitably sell at a low price by undertaking selective contracting with suppliers willing to offer a discount in exchange for more volume or other favorable terms. If those suppliers also supply the incumbent, however, an MFN imposed by the incumbent would require the supplier to charge the same price to the entrant. This parity undermines the entrant's business model by preventing it from making an attractive offer to customers. The symmetry that MFNs impose on the marketplace thus can prevent new competition that would lower prices.¹⁶⁴

115. Here, the Amazon PMFN prevents "outbreaks of competition" because Amazon mandates any sellers using the Amazon Marketplace to "set the same price on a rival's or entrant's platform. This parity may undermine the discount . . . business model by preventing it from making attractive offers to" both third-party sellers and consumers.¹⁶⁵

116. When a company imposes a PMFN prohibiting lower prices on other platforms, that provision "serves to suppress competition on the crucial dimension of price[,"] and keeps new entrants from undercutting the dominant platform's commission, and, but for the PMFN, driving consumers to the rival platform.¹⁶⁶

117. Because of the vast number of sellers subject to the Amazon PMFN, discount platforms are unable to compete. Sellers are unwilling to price at a lower level on discount platforms, because they must do so across all platforms, and therefore gain no price benefit for themselves from lower-commission platforms.¹⁶⁷

118. Economic modeling demonstrates that when a dominant platform requires its sellers to agree to a PMFN, there are (a) higher platform fees; (b) higher retail prices; and (c) firms with lower-cost models are discouraged from entry.¹⁶⁸ As shown in the Boik & Courts model, for

23 ¹⁶⁴ Baker I at 2180.

24 ¹⁶⁵ Baker I at 2181– 82.

25 ¹⁶⁶ Benjamin Edelman & Julian Wright, *Price Restrictions in Multi-sided Platforms: Practices and Responses*, 10 Competition Policy Int'l 86 (Jan. 30, 2015).

26 ¹⁶⁷ Baker I at 2182.

27 ¹⁶⁸ Andre Boik & Kenneth S. Courts, *The Effects of Platform Most-Favored Nation Clauses on Competition and Entry*, 59 J.L. & Econ. 105, 113–29 (Feb. 2016).

1 example, a lower price entrant cannot successfully enter because the platform's MFN does not
 2 allow the entrant to lower prices to attract both sellers and consumers.¹⁶⁹

3 119. Additionally, MFNs "tend to raise industry prices" because they "kill a retailer's
 4 incentives to compete in the terms of trade that it offers suppliers. The reason is that a retailer who
 5 raises the commission it charges . . . knows that the price set through its store will not increase
 6 relative to that at other stores. . . . This means that suppliers cannot asymmetrically adjust their
 7 prices to divert demand towards retailers offering more attractive contractual terms."¹⁷⁰

8 120. MFNs thus "harm competition by assisting an incumbent in foreclosing the entry or
 9 expansion of rivals."¹⁷¹ MFNs harm competition "by making it impossible for a dominant
 10 incumbent firm's rivals, including entrants, to bargain . . . for a low price."¹⁷²

11 121. Real world examples show that, when PMFNs like the Amazon's PMFN are
 12 banned, prices to consumers fall.¹⁷³ A leading booking site, for example, responded to an MFN
 13 ban in its region (and its resulting inability to impose MFNs) by introducing quality improvements
 14 to the service it provided,¹⁷⁴ suggesting online platform competition increases when PMFNs were
 15 banned.

16 122. As discussed herein, the Amazon PMFN: (a) raises prices to consumers (which
 17 they pay directly to Amazon, who then pays that amount to third-party sellers net of its fees);
 18

19 ¹⁶⁹ See also, e.g., Ameila Fletcher & Morten Hviid, *Broad Retail Price MFN Clauses: Are They*
 20 *RPM "At Its Worst"?*, 81 Antitrust L.J. 65, 74 (2016) ("MFNs can restrict entry at the retail level.
 21 Specifically, they can disadvantage potential retail competitors with low-end business models by
 22 eliminating such an entrant's ability to win customers away from the incumbent by offering lower
 23 prices and earning a smaller margin.").

24 ¹⁷⁰ Justin P. Johnson, *The Agency Model and MFN Clauses*, 84 The Review of Economic
 25 Studies, 1153–54 (Jan. 2017).

26 ¹⁷¹ Jonathan B. Baker & Judith A. Chevalier, *The Competitive Consequences of Most-Favored-*
 27 *Nation Provisions*, 27.2 Antitrust, 20, 24 (Spring 2013) ("Baker II").

28 ¹⁷² *Id.* at 24.

26 ¹⁷³ Andrea Mantovani, et al., *The Dynamics of Online Hotel Prices and the EU Booking.com*
 Case, NET Institute Working Paper No. 17-04 (2017), available at
 27 http://ssrn.com/abstract_id=3049339 [http://perma.cc/W9K9-Y546].

28 ¹⁷⁴ See *id.* at 6 tbl.1.

1 (b) prevents rival platforms from competing on price; (c) discourages new entry by a low-
 2 commission-charging platform; and (d) suppresses output by game developers. Under the
 3 economics applicable to MFNs, Amazon's PMFN is anticompetitive and causes anticompetitive
 4 effects that harm all publishers and consumers.

5 IX. CLASS ACTION ALLEGATIONS

6 123. Plaintiffs bring this action on behalf of themselves, and as a class action under the
 7 Federal Rules of Civil Procedure, Rule 23(a), (b)(2) and (b)(3), seeking damages and injunctive
 8 relief pursuant to federal law on behalf of the members of the following Class:

9 All persons who have purchased, from Amazon, a good offered by a
 10 third-party seller, on the Amazon.com platform from May 26, 2017
 to the present, with at least one purchase coming on or after May 4,
 2021.

11 124. Excluded from the Class are Amazon and its officers, directors, management,
 12 employees, subsidiaries, or affiliates. Also excluded are the district judge or magistrate judge to
 13 whom this case is assigned, as well as those judges' immediate family members, judicial officers
 14 and their personnel, and all governmental entities.

15 125. During the Class Period, Plaintiffs and Class members directly purchased third-
 16 party sellers' products from Amazon through the Amazon.com platform. Because of Amazon's
 17 anticompetitive conduct, Plaintiffs and Class members were forced to pay more than they would
 18 have if Amazon had not blocked competition. Amazon therefore has caused Plaintiffs and Class
 19 members to suffer overcharge damages. Because Amazon continues to enforce its anticompetitive
 20 "fair pricing" policy, Plaintiffs and Class members are reasonably likely to incur future
 21 overcharges. Both the actual harm and the threat of future harm are cognizable antitrust injuries
 22 directly caused by Amazon's violations of federal antitrust laws, including its anticompetitive
 23 agreement with its third-party sellers, its monopolization, or its attempted monopolization of the
 24 relevant markets, as alleged herein.

25 126. Amazon, through its unlawful conduct alleged herein, increased prices offered
 26 through competing retail ecommerce channels, reduced choice for purchasers, and caused antitrust
 27 injury to purchasers in the form of overcharges. Plaintiffs and Class members have sustained, and
 28

1 continue to sustain, significant losses in the form of artificially inflated prices caused by Amazon's
 2 anticompetitive activity. The full amount of such overcharge damages will be calculated after
 3 discovery and upon proof at trial. Unless Amazon's anticompetitive conduct is stopped, Plaintiffs
 4 and the Class will incur future overcharges in their direct purchases from the Amazon
 5 Marketplace.

6 127. The identity of all relevant transactions and Class members are readily identifiable
 7 from information and records maintained by Amazon.

8 128. **Numerosity:** Members of the Class are so numerous that joinder is impracticable.
 9 Plaintiffs believe that there are tens of millions of members of the Class (if not more),
 10 geographically dispersed throughout the United States, such that joinder of all Class members is
 11 impracticable.

12 129. **Typicality:** Plaintiffs' claims are typical of the claims of the other Class members.
 13 The factual and legal bases of Amazon's liability are the same and resulted in injury to Plaintiffs
 14 and all other members of the proposed Class.

15 130. **Adequate representation:** Plaintiffs will represent and protect the interests of the
 16 proposed Class both fairly and adequately. They have retained counsel competent and
 17 experienced in complex class-action litigation. Plaintiffs have no interests that are antagonistic to
 18 those of the proposed Class, and their interests do not conflict with the interests of the proposed
 19 Class members they seek to represent.

20 131. **Commonality:** Questions of law and fact common to the members of the Class
 21 predominate over questions that may affect only individual Class members because Amazon has
 22 acted on grounds generally applicable to the Class and because Class members share a common
 23 injury. Thus, determining damages with respect to the Class as a whole is appropriate. The
 24 common applicability of the relevant facts to claims of Plaintiffs and the proposed Class are
 25 inherent in Amazon's wrongful conduct, because the overcharge injuries incurred by Plaintiffs and
 26 each member of the proposed Class arose from the same anticompetitive conduct alleged herein.

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1 132. There are common questions of law and fact specific to the Class that predominate
 2 over any questions affecting individual members, including:

3 (a) Whether Amazon and its third-party sellers unlawfully contracted,
 4 combined, or conspired to unreasonably restrain trade in violation of Section 1 of the Sherman Act
 5 by agreeing under Amazon's PMFN that third-party sellers would not sell their products to buyers
 6 through competing retail ecommerce channels at a price lower than what they offered at the
 7 Amazon.com platform;

8 (b) Whether Amazon and its third-party sellers unlawfully contracted,
 9 combined, or conspired to unreasonably restrain trade in violation of Section 1 of the Sherman Act
 10 by agreeing that third-party sellers would be penalized under Amazon's "fair pricing" policy if
 11 they offered their products to buyers through competing retail ecommerce channels at a lower
 12 price than what they offered at the Amazon.com platform;

13 (c) Whether Amazon has unlawfully monopolized, or attempted to monopolize,
 14 the U.S. ecommerce platforms, including by way of the contractual terms, policies, practices,
 15 mandates, and restraints described herein;

16 (e) Whether competition in the U.S. ecommerce platforms has been restrained
 17 and harmed by Amazon's monopolization, or attempted monopolization, of these markets;

18 (f) Whether consumers and Class members have been damaged by Amazon's
 19 conduct;

20 (g) The amount of any damages; and

21 (h) The nature and scope of injunctive relief necessary to restore a competitive
 22 market.

23 133. **Prevention of inconsistent or varying adjudications:** If prosecution of a myriad
 24 of individual actions for the conduct complained of were undertaken, there likely would be
 25 inconsistent or varying results. This would have the effect of establishing incompatible standards
 26 of conduct for Amazon. Certification of Plaintiffs' proposed Class would prevent these
 27 undesirable outcomes.

134. **Injunctive relief:** By way of its conduct described in this complaint, Amazon has acted on grounds that apply generally to the proposed Class. Accordingly, final injunctive relief is appropriate respecting the Class as a whole.

4 135. **Predominance and superiority:** This proposed class action is appropriate for
5 certification. Class proceedings on these facts and this law are superior to all other available
6 methods for the fair and efficient adjudication of this controversy, given that joinder of all
7 members is impracticable. Even if members of the proposed Class could sustain individual
8 litigation, that course would not be preferable to a class action because individual litigation would
9 increase the delay and expense to the parties due to the complex factual and legal controversies
10 present in this matter. Here, the class action device will present far fewer management difficulties,
11 and it will provide the benefit of a single adjudication, economies of scale, and comprehensive
12 supervision by this Court. Further, uniformity of decisions will be ensured.

13 136. Amazon's activities as alleged in this complaint were within the flow of, and
14 substantially affected, interstate commerce. Amazon sells goods on its own behalf and as a
15 platform for its third-party sellers across, and without regard to, state lines.

X. CAUSES OF ACTION

**FIRST CAUSE OF ACTION
VIOLATION OF THE SHERMAN ACT
(15 U.S.C. § 1)**

19 137. Plaintiffs repeat and re-make every allegation above as if set forth herein in full.

138. Plaintiffs bring this federal law claim on their own behalf and on behalf of each
member of the proposed nationwide Class described above.

139. In violation of Section 1 of the Sherman Antitrust Act, Amazon entered into a
series of agreements with third-party sellers on Amazon Marketplace concerning the price they
were allowed to sell their products in the United States. These restraints directly limit horizontal
price competition by requiring third-party sellers to agree they will not offer their products to their
customers in the U.S. ecommerce market at a price lower than the price they offer them on the

1 Amazon.com platform. These unlawful agreements have unreasonably restrained price
 2 competition among ecommerce platforms.

3 140. Plaintiffs and the Class members have been injured and will continue to be injured
 4 in their businesses and property by paying more for transactions than they would have paid or
 5 would pay in the future in the absence of Amazon's unlawful acts.

6 141. The agreements have an open and obvious adverse effect on competition. By
 7 forcing its third-party sellers to raise prices on other platforms, Amazon limits the number of
 8 meaningful choices consumers have in the sale of Amazon Marketplace products.

9 142. Amazon's PMFN and "fair pricing" have actual detrimental effects, *i.e.*, less
 10 competitive pricing, less output, and lower quality.

11 143. As set forth above, because of its substantial market power and because of the
 12 anticompetitive effects of these restraints on competition, Amazon is liable for the creation,
 13 maintenance, and enforcement of the agreements under a *per se*, "quick look," or rule of reason
 14 standard.

15 144. There is no legitimate, pro-competitive business justification for Amazon's PMFN
 16 and fair pricing agreements or any justification that outweighs their harmful effect. Even if there
 17 were some conceivable justification, the agreements are broader than necessary to achieve such a
 18 purpose, and the anticompetitive effects of the restraints outweigh any purported pro-competitive
 19 business justification.

20 145. Plaintiffs and members of the Class were injured in their business or property by
 21 paying higher prices for transactions than they would have paid in the absence of Amazon's
 22 unlawful conduct.

23 146. Plaintiffs and Class members are direct purchasers because they directly purchase
 24 from Amazon through the Amazon Marketplace at inflated prices.

25 147. Plaintiffs and the Class are entitled to an injunction that terminates the ongoing
 26 violations alleged in this Complaint.

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1 **SECOND CAUSE OF ACTION**
 2 **VIOLATION OF THE SHERMAN ACT – MONOPOLIZATION**
 3 **(15 U.S.C. § 2)**

4 148. Plaintiffs repeat and re-make every allegation above as if set forth herein in full.

5 149. Plaintiffs bring this federal law claim on their own behalf and on behalf of each
 member of the proposed nationwide Class described above.

6 150. The relevant market is the market for ecommerce platforms.

7 151. As set forth above, Amazon possesses monopoly power. It controls 70% of
 8 ecommerce marketplace sales, and 50% or more of all online sales. Amazon also has unique
 9 advantages that allow it to exercise and maintain market power, *e.g.*, search, inventory, data, and
 10 infrastructure dominance. Amazon’s market power is also demonstrated by the exorbitant fees it
 11 charges its third-party sellers and the power to adopt and enforce rules on the platform that benefit
 12 itself and jeopardize its third-party sellers’ businesses.

13 152. Amazon has willfully acquired and/or maintained its monopoly power in the
 14 applicable markets by unlawful and improper means, including through its enforcement of its
 15 former “price parity” provision and its current “fair pricing” provision. These provisions establish
 16 a price floor based on the seller’s price listing on the Amazon.com platform. By requiring its two
 17 million third-party sellers to apply a price floor on all other retail ecommerce channels, Amazon
 18 caused all goods sold through the Amazon Marketplace to be sold at inflated prices, and Amazon
 19 charged supracompetitive commissions to buyers and sellers using the Amazon Marketplace.

20 153. Plaintiffs and Class members are direct purchasers because they directly purchase
 21 from Amazon through the Amazon Marketplace at inflated prices.

22 154. Plaintiffs and the Class members have been injured and will continue to be injured
 23 in their businesses and property by paying more than they would have paid or would pay in the
 24 future in the absence of Amazon’s unlawful acts.

25 155. Plaintiffs and the Class are entitled to an injunction that terminates the ongoing
 26 violations alleged in this Complaint.

1 **THIRD CAUSE OF ACTION**
 2 **VIOLATION OF THE SHERMAN ACT – ATTEMPTED**
 3 **MONOPOLIZATION (15 U.S.C. § 2)**

4 156. Plaintiffs repeat and re-make every allegation above as if set forth herein in full.

5 157. Plaintiffs bring this federal law claim on their own behalf and on behalf of each
 member of the proposed nationwide Class described above.

6 158. If Amazon does not already have monopoly power in the alleged relevant market, it
 7 has attempted to monopolize that market.

8 159. Through enactment of the pricing policies challenged herein—Amazon’s former
 9 “price parity” provision and its current “fair pricing” provision—Amazon has demonstrated its
 10 intent to control online prices of virtually every consumer good offered in the relevant market.

11 160. Through its enforcement of its former “price parity” provision and its current “fair
 12 pricing” provision, Amazon has furthered its goal of controlling prices of virtually every consumer
 13 good offered in the relevant market.

14 161. There is a dangerous probability that Amazon will succeed in obtaining monopoly
 15 power in the relevant market.

16 162. Plaintiffs and the Class members have been injured and will continue to be injured
 17 in their businesses and property by paying more for transactions than they would have paid or
 18 would pay in the future in the absence of Amazon’s unlawful acts.

19 163. Plaintiffs and Class members are direct purchasers because they directly purchase
 20 from the Amazon Marketplace that are set at inflated prices as a direct result of Amazon’s
 21 anticompetitive conduct.

22 164. Plaintiffs and the Class are entitled to an injunction that terminates the ongoing
 23 violations alleged in this Complaint.

JURY TRIAL DEMANDED

25 165. Plaintiffs hereby demand a trial by jury of all the claims asserted in this Complaint.

PRAYER FOR RELIEF

27 WHEREFORE, Plaintiffs pray for judgment against Amazon as follows:

1 A. The Court determine that this action may be maintained as a class action under
2 Rules 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure, appoint Plaintiffs as Class
3 Representative and their counsel of record as Class Counsel, and direct that notice of this action,
4 as provided by Rule 23(c)(2) of the Federal Rules of Civil Procedure, be given to the Class, once
5 certified;

6 B. Adjudication that the acts alleged herein constitute unlawful restraints of trade in
7 violation of the Sherman Act, 15 U.S.C. § 1;

8 C. Adjudication that the acts alleged herein constitute monopolization or attempted
9 monopolization in violation of the Sherman Act, 15 U.S.C. § 2;

10 D. Adjudication that the acts alleged herein violate the state laws alleged herein;

11 E. Actual damages, statutory damages, punitive or treble damages, and such other
12 relief as provided by the statutes cited herein;

13 F. Pre-judgment and post-judgment interest on such monetary relief;

14 G. Equitable relief in the form of restitution and/or disgorgement of all unlawful or
15 illegal profits received by Amazon as a result of the anticompetitive conduct alleged herein;

16 H. Equitable relief requiring that Amazon cease the abusive, unlawful, and anti-
17 competitive practices described herein (including pursuant to federal antitrust law: *see, e.g.*, 15
18 U.S.C. § 26), as requested he therein;

19 I. The costs of bringing this suit, including reasonable attorneys' fees; and

20 J. All other relief to which Plaintiffs and members of the Class may be entitled at law
21 or in equity.

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1 DATED: May 26, 2021

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